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NEWSLETTER OF THE UTAH SECURITIES DIVISION

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Introduction

This is the introductory issue of a quarterly newsletter from the Division of Securities. We will use the newsletter to inform broker-dealers, investment advisers, and entrepreneurs in Utah of Division activities, discuss compliance issues, and provide a summary of enforcement actions taken by the Division.

We invite your feedback. Tell us how we best can promote honesty and integrity in the financial markets. Where should we focus our examination and enforcement efforts to eliminate fraudulent schemes? We are happy to meet with you and discuss ways we can work together to increase investor confidence and prevent investment fraud.

New Director

Wayne Klein was appointed director of the Division on October 6, 2005. He came to the Division after nine years with the Attorney General's office where he did securities and antitrust enforcement work. Wayne welcomes your comments or calls at wklein@utah.gov or (801) 530-6606.

Real Estate Investments/Tenant-in-Common Interests

In 2005, the Utah Legislature amended Utah's securities and real estate laws to provide that some types of real estate investments, including most tenant-in-common (TIC) interests, only be treated as the sale of real estate; these interests were defined to not constitute the sale of securities under Utah law. This means that these real estate investments must be sold by a licensed real estate agent.

Statistical Information

Licensing Activity	New This Quarter	Dec 31 Total
Broker-dealers	26	1,610
Broker-dealer agents	1,774	65,325
Investment advisers (state only)	4	132
I.A. representatives	168	2,379
Issuer agents	1	89
Filing Activity		
Registrations by coordination	33	136
Registrations by qualification	0	2
Mutual funds/UIT's	1,205	4,410
Reg. D filings	172	690
Exemption filings	6	35

This law is unique to Utah. It requires special care by firms and agents to ensure that Utah law is met when selling these interests in Utah and when selling investment interests in Utah property to residents of other states. In addition, those selling these interests must remember that these changes only impact the application of Utah law. Other states, the SEC, and NASD continue to view many of these interests as securities, requiring the use of licensed securities agents and the types of disclosure set forth in the securities laws when selling outside of Utah.

An information sheet on this issue has been posted on the Division web site at www.securities.utah.gov.

Investor Education Efforts

The Division devotes significant effort educating the public about fraudulent investment schemes and encouraging consumers to invest only through licensed professionals. We hope this will reduce the amount lost to fraud and increase confidence in the integrity of those who are licensed.

Recent investor education efforts have included presentations with the AARP at “Staying Sharp” seminars in Logan, Salt Lake, and St. George; sponsoring a television program on KUED called “The Aging Game;” hosting an information booth at the 2005 “Senior Expo;” and contracting with KUTV and KSL television to run public service announcements warning of fraudulent practices. We welcome invitations to speak to community organizations, church groups, and brokerage firm branch office training meetings.

We also seek to educate the public by posting on our web site copies of all disciplinary and enforcement orders. Press releases describing the actions taken by the Division also are posted on the Division’s web site. Some of these press releases have been sent to the media, such as the Division’s January 1, 2006 description of the top ten investment scams predicted for 2006.

Enforcement

The disciplinary actions, consent orders, and criminal cases brought in the last quarter of 2005 are described below. Copies of these actions may be found on our web site at www.securities.utah.gov.

<u>Date</u>	<u>Description</u>
Oct. 3, 2005	An order to show cause was issued against Masada Capital and Roy A. Clarkston of Ogden for selling a fraudulent loan-guarantee program to investors (advance-fee scheme). A consent order was entered in November. Docket No. SD-05-0063
Oct. 3, 2005	A petition was issued to bar the license of David A. Settle , of Nephi, UT. Settle, who had been an agent of Ameriprise and Waddell & Reed, is alleged to have

made unauthorized withdrawals from client accounts to pay personal expenses. The case is pending. Docket No. SD-05-0066

Oct. 14, 2005 The Utah Court of Appeals affirmed the conviction of **Gerald Steven Wallace** for multiple counts of securities violations. Wallace promoted a Ponzi scheme, claiming to earn money for investors by facilitating money transfers between banks. The appeals court refused to accept Wallace's claims of ignorance of the law and that the violations were not willful. The court said "one material misrepresentation or omission alone . . . may be the basis for a securities fraud conviction."

Oct. 17, 2005 The broker-dealer license of **Bayou Securities** (Stamford, CT) was cancelled after it ceased conducting business (after the collapse of the hedge fund it managed). Docket No. SD-05-0067

Oct. 17, 2005 **Accutek Solutions**, of Hurricane UT, consented to an order finding that Accutek (an accounting firm) held itself out as an investment adviser and employed an unlicensed investment adviser agent. Accutek admitted the violations, paid a \$1,000 fine, and will cease acting as an unlicensed investment adviser. This closed a case initiated in November 2004. Docket No. SD-04-0037.

Oct. 21, 2005 An order to show cause was issued to **William R. Clemons** of Salt Lake City for fraudulently selling guaranteed investment contracts to investors and falsifying a license application by denying he had been charged with a felony. At the time of his application, he had been charged with nine felonies and had pled to two of them. The case is pending. Docket No. SD-05-0068.

Oct. 28, 2005 Criminal charges were filed by the Attorney General against **Peter G. Polschak** of Salt Lake City for soliciting over \$900,000 from an investor to start a software company, then converting the money for personal expenses for him and his girlfriend. Polschak currently is a fugitive.

Nov. 16, 2005 An order to show cause was issued to **Great Salt Lake Mortgage** (GSLM) of Bountiful and **Philip T. Jessee** of Farmington for selling over \$5 million in promissory notes to 46 investors. The notes were issued by GSLM and promised high interest rates. The OSC alleges GSLM and Jessee violated registration and licensing requirements and engaged in fraudulent practices. The case is still pending. Docket No. SD-05-0073.

Nov. 21, 2005 **Val D. Christoffersen** of West Jordan pleaded guilty to four counts of securities fraud. Christoffersen was a licensed securities agent. He solicited \$90,000 from investors for an investment program he would run outside his brokerage firm. Half the money he raised was used for personal expenses; the other half was lost in trading. He was sentenced to six years probation and ordered to pay restitution. This case was brought by the Attorney General at the request of the Division. The Division had revoked Christoffersen's securities license in 2004.

- Nov. 25, 2005 **Masada Capital** and **Roy Clarkston** consented to an order that they cease and desist violating securities laws. They paid \$5,800 in restitution and a \$500 fine to resolve the Division's October 2005 Order to Show Cause involving an advance-fee scheme. Docket No. SD-05-0063.
- Dec. 7, 2005 An emergency order to cease and desist and an order to show cause were issued to **CommuniCom Direct** and **Jordan N. Tenney** of Salt Lake. They were accused of selling scores of factoring agreements to investors, raising \$295,000. The order alleges that these agreements were sold without disclosing that two company officers had prior criminal convictions, including the president who was soliciting money while awaiting sentencing on a securities fraud conviction. The order also alleges some of the money owed to investors was used to pay expenses of the criminal defense of the president. This matter is pending. Docket No. SD-05-0074.
- Dec. 7, 2005 **Donald W. Dennett** of Springdale consented to a cease and desist order and will pay a fine, in this case initiated in 2003. Dennett sold investment opportunities in resorts in the Caribbean and Mexico. Investors could use the resort and also profit by having the resort rented to others and collecting profits. Docket No. SD-03-0080.
- Dec. 7, 2005 **Access Financial Group** of Chicago consented to an order relating to inadequate supervision of an agent who engaged in manipulation, sold unsuitable investments to clients, engaged in excessive trading (7.5 annual turnover ratio), made unauthorized transactions, and conducted outside unauthorized business activities. Access paid a fine of \$100,000, paid \$40,000 in restitution in addition to \$120,000 previously paid, and will cooperate in the Division's continuing case against the former agent. Docket No. SD-00-0041.
- Dec. 9, 2005 **Angelo M. Degenhardt** pleaded guilty to securities fraud in federal court in a case referred by the Division. Degenhardt, of Sandy, sold stock in a company that would operate a brewpub in Park City, but did not disclose his many unpaid judgments and prior business failures. He was sentenced to five years probation and ordered to pay restitution.
- Dec. 12, 2005 **Michael B. Scharbach** of Smithfield pleaded guilty to four felony securities violations for taking money to invest in day trading, the futures market, and a loan-fee program. He guaranteed investors against loss and did not tell them about his prior bankruptcies and delinquencies in court-ordered payments. The case was brought by the Cache County Attorney, following a referral from the Division. He will be sentenced in early 2006.
- Dec. 13, 2005 **James M. Hardman** of Salt Lake City pleaded guilty to two felonies after taking \$20,000 he solicited from an investor. He had promised he could earn 10-25% profit each day with his trading strategies, but pocketed the money instead. He

was sentenced to probation because he had paid full restitution. The Attorney General prosecuted this case.

- Dec. 14, 2005 A consent order was entered against **Richard K. Zollinger** of Millville for selling a worthless 1935 Paraguayan bond to an investor, claiming it was valuable and still paying interest. Zollinger admitted the violations, will repay the investor, and will pay a \$10,000 fine to the Division. Docket No. SD-05-0076.
- Dec. 16, 2005 **John B. Tenney** consented to an order in which he was fined \$25,000 for selling factoring agreements from a company called **EchoTek Communications**. Tenney was criminally convicted for this conduct and currently is in prison. The Division waived payment of the fine so any money can be paid in restitution. This is Tenney's second conviction for securities violations in Utah. Docket No. SD-02-0106.
- Dec. 16, 2005 The Utah Attorney General filed criminal charges against **William C. Miller** of Ogden for taking money from investors for a business that would manufacture ski goggles. Miller was charged with seven felonies for securities fraud, selling unregistered securities, violating an order of the Division, and racketeering. Miller failed to disclose to investors his prior criminal convictions, bankruptcy, cease and desist order, and unpaid judgments. Miller is a fugitive on the earlier securities fraud case and still owes \$448,000 in restitution.
- Dec. 21, 2005 Four felony counts of securities violations were filed by the Attorney General against **Ronald Dean Udy** of Brigham City for selling promissory notes. Udy, a former agent of Park Avenue Securities, raised \$450,000 from investors for various businesses he ran. These notes were sold after Udy's license to sell securities was revoked by the Division. One of the criminal charges accuses Udy of making false statements to the Division in an earlier investigation.
- Dec. 28, 2005 **Janelle M. Garner** of Ogden was charged by the Attorney General with six felony securities violations for selling convertible promissory notes to investors. She raised money for her company: Attitude Adjustment Factory. She sold notes in violation of an earlier cease and desist order from the Division and made false representations to the investors.
- Dec. 30, 2005 An order to show cause was issued against **Auto Rama** and its two principals **Scott L. Rhoads** and **Zacharia L. Rhoads** of Harrisville. The order alleges they sold \$800,000 in promissory notes to investors who were told the money would be used to purchase cars being sold at the Auto Rama dealership. The order alleges that many of the statements made to investors were false and that the same car often was promised to multiple investors as collateral – even though the title had previously been pledged to the auto auction. The Respondents continued soliciting money despite still owing payments to earlier investors. Investors also were not told about an earlier failed dealership. The case is pending Docket No. SD-05-0079.